



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 4, 2007 REPORT NO. 07-052

ATTENTION: Honorable Council President and City Council,
Agenda of April 10, 2007

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION for
Balboa Mesa - Project No. 70797, Council District No. 6

OWNER: Balboa Realty, LLC

APPELLANT: Butch Biendara

SUMMARY

Issues - Should the City Council uphold the Hearing Officer's and Planning Commission's certification of Mitigated Negative Declaration No. 70797?

Staff Recommendations

1. DENY the appeal and UPHOLD the Environmental Determination (Mitigated Negative Declaration No. 70797 with associated Mitigation, Monitoring and Reporting Program).
2. Make an express finding that the information provided by the appellant is not substantial evidence of significant unmitigated impacts, because it is "...argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous...." (Reference: State CEQA Guidelines Section 15384(a)).

Environmental Review - The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) prepared an Initial Study and completed a Mitigated Negative Declaration (No. 70797).

Fiscal Impact Statement - None with this action. All costs associated with the processing of this appeal are paid by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement - None with this action.

BACKGROUND

A Site Development Permit and Planned Development Permit for the Balboa Mesa project was approved by the City of San Diego Hearing Officer on November 15, 2006. The project was appealed to the Planning Commission and on January 25, 2007, the Planning Commission denied the appeal and upheld the Hearing Officer's decision to approve the Site Development Permit and Planned Development Permit, and certify Mitigated Negative Declaration (MND) No. 70797.

The only issue before the Council today is the appeal of the environmental document. However, information about the project has been included in this report to provide a context for Council's discussion of the Mitigated Negative Declaration. Any project details and conditions discussed relate to an already approved project, and they cannot be changed. However, if Council grants the appeal, the project will be subject to additional environmental review.

Project Description

The approved Site Development Permit and Planned Development Permit allows the demolition of 13,096 square feet and construction of 29,430 square feet, for a new total of 207,138 square feet of commercial retail space at an existing shopping center located at the southeast corner of Genesee and Balboa Avenues. The 16.22 acre site is located at 5401-5685 Balboa Avenue and 4104 Genesee Avenue in the CC-1-3, CN-1-2, Community Implementation Overlay Zone (CPIOZ) and the Clairemont Mesa Height Limit Overlay Zone of the Clairemont Mesa Community Plan area. The Project required a Site Development Permit as it is located in the CPIOZ Type B, and a Planned Development Permit in accordance with the Community Plan. The Proposal would amend the existing Community Plan Implementation Overlay Zone and Planned Commercial Development Permit No. 96-7779.

Project Setting

The proposed project site is an existing commercial retail shopping center that has been developed over the last forty years. It is located at the southeast intersection of Balboa and Genesee Avenues at 5401-5685 Balboa Avenue and 4104 Genesee Avenue. Balboa Avenue was a State highway in 1996 when State legislators formed the Balboa Avenue Citizens Advisory Committee (BACAC) for community involvement in the upgrading of the highway. Soon after, the State relinquished the highway to the City of San Diego to be a local street. The City of San Diego and the BACAC worked together to form a vision of a more pedestrian friendly upgrade of Balboa Avenue including enhanced medians and increased pedestrian connectivity across the former highway. On September 12, 2005, the City Council adopted the Balboa Avenue Revitalization Action Program (BARAP) that identified desired enhancements to this corridor. The proposed project is in response to the desire by the community to have a pedestrian crossing between Genesee Avenue and Mount Alifan Drive to the east. This project would demolish four existing retail structures, provide for the installation of a traffic signal and required enhancements to internal circulation of the shopping center and permit four new commercial

structures with an increase in gross square footage of approximately 16,400 to a new total of 207,138 square feet of commercial retail space at the existing shopping center.

The Clairemont Mesa Community Plan designates this site as a portion of the Community Core and places it in the CPIOZ, Type B, recommending that a Planned Development Permit be obtained. Recommendations include improved internal circulation for vehicles, pedestrians and bicyclists, along with improved landscaping along Balboa Avenue. In addition, the Community Plan and the BARAP recommend a pedestrian crossing between this center and the commercial retail center to the north. A project feature would be the installation of a pedestrian and vehicle crossing (traffic signal) between the two centers and the installation of a new bike lane on Balboa Avenue, thus meeting the intent of the Plan. The proposed project would demolish older structures and construct new commercial retail structures along Balboa Avenue with pedestrian walkways and plazas, further implementing the Plan.

DISCUSSION

Environmental Review

The City's Land Development Code (Section 128.0103) assigns the responsibility for implementation of CEQA to the Development Services Department (DSD). The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project proposals to determine whether there is a potential for such actions to result in physical impacts on the environment.

In May 2005, the Balboa Mesa project was submitted for discretionary review. After preparing an Initial Study, EAS staff determined that an MND was the appropriate environmental document for the project. The Initial Study, contained in MND No. 70797, identified potentially significant but mitigable impacts in the issue areas of human health/public safety/hazardous materials. The Initial Study also addressed transportation/circulation and water quality. (Prior to preparing the Initial Study, staff also evaluated potential impacts in all of the issue areas listed in the MND's Initial Study Checklist.)

Environmental Issues Raised in the Appeal

Pursuant to Section 21151(c) of the CEQA statutes, Mr. Butch Biendara filed an appeal of the City of San Diego Hearing Officer's certification of the MND for the Balboa Mesa project, and of the Planning Commission's validation of the Hearing Officer's certification. It should be noted that the appellant has also stated that they are preserving their right to appeal the project. However, all project appeal rights have been exhausted. The only issue before the Council today is the appeal of the environmental determination.

Staff has highlighted the issue areas pertaining to the environmental document and summarized the main topics addressed in the appeal received February 5, 2007, (Attachment 1), as follows:

Appeal Issue: Segmentation of the project as it relates to the California Environmental Quality Act.

Staff Response: The California Environmental Quality Act (CEQA) defines a project as “the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment” where the activity “involve[s] the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” (CEQA Guidelines, sec. 15378; Public Resources Code sec. 21065). The phrase “whole of the action” has been interpreted by the California Supreme Court to mean that it is generally unacceptable to “segment” a project into small pieces or smaller projects to avoid preparing an Environmental Impact Report (EIR) or in an effort to avoid full disclosure of certain environmental impacts when it is known or is foreseeable that one or more of the segmented smaller projects would require the other (See *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263.). Thus, an agency may not treat each separate permit or approval as a separate project when evaluating environmental impacts.

The appellant claims that the Genesee Plaza Expansion project and the Balboa Mesa Expansion project are one project as defined by CEQA and therefore preparing an environmental document for each project is segmenting the “whole of the action” and attempting to avoid full disclosure of the environmental impacts and/or the preparation of an EIR. However, segmentation does not occur for the following reasons:

- 1) Genesee Plaza and Balboa Mesa are separate projects pursuant to CEQA because either project may be approved, while the other is denied, and still be implemented by the respective applicant. There is no reason to assume that approval of Genesee Plaza means Balboa Mesa would necessarily be approved or vice versa. In other words, neither project is a reasonably foreseeable consequence of the other; the projects could be approved or denied independent of one another. In addition, neither project is providing needed access to the other, nor is one project a phase of the other or an expansion of the other. Moreover, neither would rely on essential public services that would be provided by the other project (i.e. no aspect of Genesee Plaza relies on a service (such as public utilities) that would be provided by Balboa Mesa, and vice versa).
- 2) The preparation of separate environmental documents for the two independent projects was appropriate, assumed a worse case scenario, and evaluated all potential direct, indirect, and cumulative environmental impacts. It should be noted that for environmental purposes, each project assumed implementation of the other in their respective environmental analyses. Thus, should both projects be approved and implemented, all impacts have been disclosed and mitigated to a level below significance. Likewise, should one project be approved and the other not, because separate documents have been prepared for each project, all potential impacts have been disclosed and mitigated and the approved project would not be left to rely on the other project’s environmental analysis or on an incomplete environmental analysis.

The environmental documents for each project examined all potential direct and cumulative impacts. The findings of the environmental Initial Study determined that there would not be any significant direct or cumulative unmitigable impacts from either project, nor would there be any significant direct or cumulative unmitigable impacts if one or the other project is

implemented, but not both. Thus, a Mitigated Negative Declaration was appropriate. An Environmental Impact Report would not be appropriate and is not warranted.

It is worth mentioning that segmentation of a project to avoid full disclosure of potential environmental impacts should not be confused with two separate project applicants collaborating to provide two separate complementary projects (i.e. ensuring driveway design coordinates with a traffic signal/pedestrian crossing).

Appeal Issue: Conformance with the Clairemont Mesa Community Plan as stated in the Mitigated Negative Declaration (MND).

Staff Response: The MND states that the project is consistent with the goals and objectives of the community plan. The phrase “Consistent with the goals and objectives of the community plan” is used throughout the MND, Initial Study, Initial Study Checklist, and the Response to Comments received during the public review. The word conformance is used once in the Initial Study checklist in response to the question “Would the project result in a substantial alteration to the existing character of the area?” The response: “The proposed project is in conformance with the general character of the area and the recommendations of the community plan.”

The project site is designated in the Clairemont Mesa Community Plan as being within the Community Core and subject to the Community Plan Implementation Overlay Zone (CPIOZ) Type B.

The Plan contains a number of CPIOZ design guidelines in order to ensure that development occurs with a unifying architectural, sign and landscape theme and creates a pedestrian environment in the Community Core area. The project as proposed, replaces the existing buildings, which do not meet the architectural character envisioned for the center, with new buildings which do. The proposed buildings include articulation, varying roof lines, canopies, trellises and pedestrian plaza areas. The public plaza areas include seatwalls, landscaping and hardscape elements, also allowing for additional space to accommodate outdoor dining areas.

Further, in accordance with the Balboa Avenue Revitalization Action Program (RAP), some building footprints will move closer to the edge of the street, thus encouraging pedestrian activity along the street frontages. Also included in the project proposal are a network of pathways throughout the shopping center, including areas of enhanced paving and landscaping. In order to improve pedestrian circulation and promote walkability, the applicant worked with staff to expand this network of pathways as to provide several options to pedestrians, rather than provide one ten-foot wide walkway.

In order to promote bicycle circulation, bicycle lanes will be added to Balboa Avenue as a feature of this project. In regards to parking, the Community Plan states that "Parking in the community core should be underground, behind the building or within the building." and further states that large surface parking areas should be screened from the public right-of-way and include colored-concrete paving (pg. 48). A significant portion of the proposed parking is located behind buildings, as a portion of the proposed buildings will be located along the edge of the street, and new landscaping will be added throughout the parking area as well as all along the

project street frontage in order to screen the parking area, and finally areas of enhanced colored concrete paving will be included throughout the parking lot.

In regards to the pedestrian bridge, it is no longer the preferred option, as noted in the BARAP. A signalized crossing is the preferred option which came out of the community workshops that were held in order to develop the BARAP, as part of the SANDAG Walkable Communities Demonstration Grant Program.

In summary, the proposed project is in conformance with the Community Plan, as all of the improvements outlined above will help to create an architecturally unified shopping center with an improved pedestrian environment.

Appeal Issue: Mitigated Negative Declaration does not adequately address safety impacts of proposed traffic signal for pedestrians.

Staff Response: The proposed traffic signal would provide a safe pedestrian crossing that would also improve interconnectivity between the two shopping centers, without resulting in a significant impact on circulation. The Mitigated Negative Declaration for the project notes that the standard driveway traffic signal phasing for this location would be permissive left turn phasing to address vehicular, pedestrian and bicycle crossings. In response to comments through the process, the phasing of the signal was modified to protected/permissive left turn phasing, as noted in the document. Either scenario would be safer than the current situation where pedestrians illegally cross Balboa Avenue at unprotected mid-block locations.

Appeal Issue: Discussion of alternatives for the location of the traffic signal in the Mitigated Negative Declaration.

Staff Response: Discussion of Alternatives occurs as a required section in an Environmental Impact Report. The purpose of this discussion section is to present a project alternative that lessens or avoids an environmental impact that was not successfully mitigated (i.e. significant traffic impacts due to high Average Daily Trip counts could be lessened by reducing the project's number of residential units or building square footage).

Project design alternatives, particularly when an unmitigated significant impact is not present, are not required discussion in a Mitigated Negative Declaration. The conclusion reached by the City Traffic Engineer was that the intersection met traffic design and pedestrian crossing standards and is thus safe for pedestrian use. Because an unmitigated environmental impact does not result, a discussion of an environmentally superior alternative is not warranted.

The installation of the traffic signal is proposed as a project feature and is not a mitigation measure. Prior to the project being submitted to the City for review, alternative locations were considered by City staff and the applicant. These alternative locations were noted and discussed during the two public hearings on the project. The ultimate location of the proposed traffic signal was chosen by the applicant as working best for the development while conforming to the intent of the community plan. Several operating assumptions are noted in the environmental

documentation as being necessary to ensure the signal will operate effectively at the proposed location.

CONCLUSION

Staff believes that MND No. 70797 adequately addresses the project's potential impacts, and that implementation of the Mitigation, Monitoring and Reporting Program would avoid or reduce such impacts to below a level of significance.

ALTERNATIVES

1. GRANT the appeal, set aside the environmental determination, and REMAND the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate.
2. GRANT the appeal and make a superceding environmental determination or CEQA findings. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that the project would result in significant environmental effects.

Respectfully submitted,

Marcela Escobar-Eck
Director, Development Services Department

Approved: James T. Waring
Deputy Chief of Land Use and
Economic Development

Attachment: [Appeal Application \(Dated and Received by the City Clerk's Office February 5, 2007\)](#)